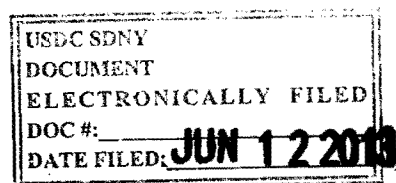


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK-----X  
MENDELSSOHN PEREZ,

Plaintiff,

-v-

RUDDY DE LA CRUZ, et al.,

Defendants.  
-----X

09 Civ. 264 (JPO)

ORDER ADOPTING  
REPORT AND  
RECOMMENDATION

J. PAUL OETKEN, District Judge:

In this action, *pro se* Plaintiff Mendelssohn Perez asserts several claims under the civil rights statutes, together with several common law claims, against defendants MTA Police Officer “John de la Cruz,” Ruddy de la Cruz, Dolca de la Cruz, and the “de la Cruz family.” Before the Court is the motion for summary judgment of Defendants Ruddy and Dolca de la Cruz—the only remaining defendants. Plaintiff Perez also moves to amend his Complaint. For the reasons that follow, Magistrate Judge Michael H. Dolinger’s Report and Recommendation of February 20, 2013 is adopted in its entirety, and summary judgment is granted in part and denied in part; and Plaintiff’s motion to amend is denied.

**I. Standard of Review**

“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Mario v. P & C Food Mkts., Inc.*, 313 F.3d 758, 766 (2d Cir. 2002); *accord Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (“As a rule, a party’s failure to object to any purported error or omission in a magistrate judge’s report waives further judicial review of

the point.”). Accordingly, whenever parties fail to object to a Magistrate Judge’s Report and Recommendation (“R&R”), the Court reviews its findings for clear error. *See, e.g., Johnson v. Reno*, 143 F. Supp. 2d 389, 391 (S.D.N.Y. 2001) (“If neither party objects to the report, the Court ‘need only satisfy itself that there is no clear error on the face of the record.’” (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985) (citations omitted))).

## **II. Conclusion and Order**

Here, Judge Dolinger issued his decision on February 20, 2013, notifying the parties that they had 14 days within which to object to his findings. (*See* R&R at 39.) To date, neither party has asserted any objection to Judge Dolinger’s R&R.

Upon review of the record and Judge Dolinger’s careful and thoughtful analysis, the Court finds that there is no clear error on the face of the record.

Accordingly, Judge Dolinger’s Report and Recommendation is hereby adopted in full, and Defendants’ motion for summary judgment is GRANTED on all claims, with the exception of Plaintiff’s claims against Ruddy de la Cruz arising from the Fourth Amendment and common law for false arrest and unlawful search, as to which the motion for summary judgment is DENIED. Plaintiff’s motion to amend is denied.

SO ORDERED.

Dated: New York, New York  
June 12, 2013

  
J. PAUL OETKEN  
United States District Judge